

Editorial:

Abuse of the “Disruptive Physician” Clause

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Buried deep in the “Corrective Action” section of most medical staff bylaws is a provision known as the “Disruptive Physician” clause. It is arguably the most dangerous and, in recent years, the most abused provision in medical staff bylaws.

The term “disruptive physician” is purposely general, vague, subjective, and undefined so that hospital administrators can interpret it to mean whatever they wish.

How this treacherous trap got into medical staff bylaws is no mystery in most instances. It was added at the urging of hospital administrators, often with help from a medical staff president who was duped into believing that the clause would only be used in those extreme cases where a physician was found running drunk or naked through the halls of the hospital.

Lack of vigilance by physicians, and failure of medical staffs to obtain independent legal advice on changes to the bylaws, allowed most hospital administrations to insert this clause without difficulty or any meaningful opposition.

Why this clause was strategically placed in medical staff bylaws is also no mystery. It is part of the strategic plan developed in 1990 by the hospital industry. The stated goal was to gain more control over physicians in hospitals. Abuse of the disruptive-physician clause and increasing use of sham peer review has allowed hospital administrations to make great strides in achieving that goal.

Attorneys who specialize in representing hospitals have definite recommendations on how “disruptive physician” can be defined by a hospital, in order to remove a targeted physician from staff. In fact, some law firms offer seminars for hospital officials and their legal representatives that teach optimal methods for eliminating certain physicians that the hospital dislikes. Here are a few of the criteria for identifying a “disruptive physician”:

1. **Political:** Expressing political views that are disagreeable to the hospital administration.
2. **Economic:** Refusing to join a physician-hospital venture, or to participate in an HMO offered to hospital employees, or offering a service that competes with the hospital.
3. **Concern for quality care:** Speaking out about deficiencies in quality of care or patient safety in the hospital, or simply bringing such concerns to the attention of the hospital administration.
4. **Personality:** Engaging in independent thought or resisting a hospital administration’s “authority.”
5. **Competence:** Striving for a high level of competence, or considering oneself to be right most of the time in clinical judgment.
6. **Timing:** Making rounds at times different than those of the “herd.”

Although the disruptive-physician clause and sham peer review are current weapons of choice used by hospital administrations across the country, more weapons of physician destruction loom on the horizon.

Physicians should be aware of the “Code of Conduct” and “Exclusion from the Hospital Premises” clauses currently being promoted by the hospital bar.

AAPS has posted a letter dated January 31, 2003, to the General Counsel of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), which was drafted by the leaders of the credentialing and peer review practice group of the American Health Lawyers Association, in the Hall of Shame on our website (see www.aapsonline.org). The letter is rated “R” for stark Reality. Physicians need to wake up quickly and take notice because this is what hospitals really have in mind for medical staffs across the nation. Interested readers can also learn more about the hospital industry’s strategic plan, developed in 1990: see “Hospital Industry Reveals Its Strategic Plan: Control Over Physicians” in the AAPS Hall of Shame.

Physician vigilance, and advice from knowledgeable, independent counsel, are key to preventing further abuse of medical staff bylaws by hospital administrations.

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Memo to the Disruptive Physician

*Oh how we strive
For quality high,
For health
And most of all safety.*

*But a word to the wise:
Reproof we despise
And outspoken physicians:
We hate thee.*

*Feel free to opine,
But note we define
All critics
As never constructive.*

*And, thus shall ensue
A sham peer review
And henceforth
You’re labeled “disruptive.”*